No. 92-2007

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

THOMAS J. ROEHL, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

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August 31, 1993

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THE RIGHT TO HOLD PUBLIC OFFICE IS NOT DETERMINATIVE ON THE ISSUE OF RESTORATION OF CIVIL RIGHTS TO REMOVE A PRIOR CONVICTION FROM THE SENTENCE ENHANCEMENT PROVISIONS OF 18 U.S.C. SECTION 924.

The Government's brief relies heavily on the fact that Thomas Roehl's discharge certificate does not restore the right to hold public office. However, the Wisconsin Statute that grants restoration of civil rights does not indicate that the right to hold office is not restored. Petitioner's Brief, app. 1c. That requirement is not found in federal law either. 18 U.S.C. § 921 (a) (20) provides that:

> What constitutes a conviction of such a crime shall be determined in accordance with the laws of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a

> conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

A reading of this statute does not reveal that Congress intended the right to hold public office to be determinative on the issue of whether civil rights have been restored. Had that been the intention, it would have been an easy matter to include that provision.

The Government's brief is correct when it cites cases that require "the right[] to vote, to sit on a jury and to hold public office" in order to find that there has been a restoration of civil rights. Respondent's brief at 5-6. However, that is by no means uniform. The Sixth Circuit, in United States v. Driscoll, 970 F.2d 1472 (6th Cir. 1992)

held that state law should be examined to determine if post sentence felons have been restored to their **full** civil rights. Id. at 1480 (emphasis added). That circuit does not arbitrarily choose three civil rights to determine if there has been a restoration; rather, post-sentence felons in the Sixth Circuit must have all of their civil rights restored in order to have a prior conviction removed for purposes of the sentence enhancement provisions. Thus the split among the circuits is evident.

THE CIRCUITS ARE NOT UNIFORM IN REVIEWING DISCHARGE DOCUMENTS VERSUS THE WHOLE OF STATE LAW TO DETERMINE A RESTORATION OF CIVIL RIGHTS.

The Government also glosses over the clear division among the circuits as to what a court may consider in determining whether a State has restored a former felon's civil rights. The Government

insists "the courts of appeals uniformly examine 'the whole of state law,' as well as any particular document that a former felon may have received from the State, to determine whether an individual's civil rights have been restored." Respondent's brief at 7 (emphasis added).

However, this statement is a truism at best and an obfuscation at worst. Of course, courts must look at something when determining whether a State has restored a former felon's civil rights. The only two sources that can be used in this determination are the whole of state law and the particular discharge document. So, the Government's statement adds nothing to the discussion of this issue.

The obfuscation comes from the Government's use of the words "as well as." The Government tries to hide a vast

gulf between two groups of circuit courts behind these three words. See Petitioner's brief, 10-14. This split, clearly outlined by Petitioner (see Petitioner's brief, 10-14), cannot be so curtly dismissed.

CONCLUSION

For the reasons stated in Petitioner's Petition and Reply Brief, the Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit should be granted.

Respectfully submitted,

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